

COUGHING UP

Justice for Southern African gold mineworkers with silicosis and tuberculosis

1. Introduction

Under apartheid, mining was South Africa’s biggest industry. Hundreds of thousands of mineworkers, recruited from rural areas of South Africa and neighbouring countries, toiled underground in appalling conditions digging for gold. Production levels were high, yet profits were consistently prioritised over the safety of workers. Black mineworkers, unlike their white counterparts, undertook the dustiest jobs, often without safety

apartheid. It explains what silicosis is and the effects it has on mineworkers’ health. It describes the inadequate statutory compensation scheme and recent legal actions against the mining companies.

Finally, ACTSA’s demands are stated at the end of this paper. **In short, we call on the mining companies that profited from South Africa’s gold to cease their legal manoeuvring and immediately agree to provide proper medical screening, decent financial compensation and healthcare, and adequate support for all ex- and current mineworkers suffering from silicosis and TB.**

‘I am in a constant state of pain and I constantly worry about how my family and I will survive now that I am ill and cannot work.’

DANIEL (66)

protection. They were considered cheap, expendable labour. Now tens, possibly hundreds, of thousands are suffering from silicosis, an incurable, debilitating and progressive disease which makes the sufferer much more likely to contract tuberculosis (TB). These men were discarded when ill, sent back to their home villages sick and to die. Their health and, in some cases, their lives have been taken from them for apartheid gold. This scandal is compounded by the refusal of the mining companies to accept responsibility for what they did to their employees.

This briefing paper summarises the history of the gold mining industry in South Africa and the dreadful working conditions for black mineworkers under

Right: Supporters of ACTSA and other members of the STOPAIDS network protest outside the London headquarters of Anglo American in October 2015



CREDIT: STOPAIDS

ACTSA took up the campaign for justice for Southern African gold mineworkers with silicosis and TB in 2012. We work with South African civil society organisations who are engaged in the struggle for justice, including the National Union of Mineworkers (the union that has historically represented workers in the gold mining industry), the Legal Resources Centre, Section 27 and the Treatment Action Campaign. In the UK we work with the British law firm Leigh Day and as a member of the London Mining Network.

2. Gold mining in South Africa

History

The discovery of gold on the Witwatersrand (a north-facing scarp, 56 kilometres in length, in what is today Gauteng Province) in 1886 was a turning point in South Africa's history. The gold mining industry continued to grow throughout much of the early 20th century, significantly contributing to the expansion and transformation of the economy of what was then

'I am sick because of the mine. My family and I are hungry all the time ... I am hurt because I was treated badly.'
FLATELA (64)

known as the Union of South Africa. Astonishingly, gold mining in South Africa had, by 1975, produced 40% of all gold ever mined.¹ The gold ore was mostly classed as low grade, meaning that a large amount of ore was needed to be mined and crushed to extract a small amount of gold. As a result, the mining industry, which was largely owned by European companies and thus white-dominated, needed a large and cheap supply of labour. For this, they looked to migrant workers from rural areas of South Africa and from neighbouring countries.

The government supported the mining companies in two key ways. Firstly, the Natives Land Act, 1913 reserved 87% of South Africa's land (including the best land for agriculture and the bulk of mineral deposits) for the white minority and confined the vast majority of black people to 'native reserves'. Secondly, the authorities introduced taxes, which impelled black South Africans to go to the towns and become mineworkers. By 1910 there were already around 200,000 black gold mineworkers in South Africa, and by 1985 they numbered approximately 500,000.² The post-apartheid Truth and Reconciliation Commission stated that the mining

industry was responsible for 'direct involvement with the state in the formation of oppressive policies and practices'.³

Key companies

Anglo American South Africa (AASA) was the largest and longest established gold mining company in South Africa throughout the 20th century, operating 12 mines within its group. AASA is a wholly owned subsidiary of global mining giant Anglo American plc, which has a primary listing on the London Stock Exchange. AASA made enormous profits from apartheid gold. The company is no longer involved in gold mining but it is a major producer of diamonds, platinum, iron ore and thermal coal. The most significant of the other companies who are (or have been historically) involved in gold mining in South Africa are: African Rainbow Minerals; AngloGold Ashanti; Gold Fields; Harmony; and Sibanye Gold. AASA and these five mining companies have formed the Occupational Lung Disease Working Group (OLDWG).

The OLDWG states that 'the gold mining industry places a high value on the health and wellbeing of all our employees. Our concern and care extends to all our former employees, especially to those who may have developed occupational lung disease ... as a result of their time working in the industry.'⁴ While it is true that reasonable dust management and silicosis elimination targets and milestones were agreed between government, trade unions and mining companies in 2003, the dust management milestone was not met, and it is too soon to definitively say whether the silicosis milestone will be met.⁵ Moreover, the dangers of silicosis - and the means of preventing it - were well known during the apartheid era. The inescapable truth is that the mining companies built their businesses through the hard work of black mineworkers and chose to disregard their safety.

'My chest is in constant pain. The mine turned me into scrap.'
NELSON (58)

Conditions of mineworkers

Until the end of apartheid in 1994, the mining industry operated with virtually no regard for the well-being of its black employees. The South African mining industry had an appalling safety record: approximately 69,000 mineworkers died in accidents between 1900 and 1993, and more than 1 million

'I was healthy when I started working for the mine. After I was diagnosed the mine no longer wanted to employ me. They must pay me for making me sick because I came home to 7 children that I could no longer feed.'

MASHUYANA (60)

were seriously injured.⁶ In addition, the wages of black mineworkers were very low. For example, 'in the gold mining industry the real wages of blacks declined by about one-seventh between 1911 and 1941; white miners received 12 times the salary of blacks'.⁷

Underground working conditions were arduous. Mineworkers were constantly exposed to noise, heat, chemicals and air pollutants including silica dust. Mining companies were aware of these risks, as well as the measures that needed to be taken to protect mineworkers. Yet in the few instances where respirators were available, they were ineffective and no new filters were provided. In addition, surfaces to be cut or drilled were not wetted down, blasting intervals were not observed, ventilation was inadequate, there were generally no on-site showers or changing facilities, and training on dust and disease prevention was not delivered.

The mining companies chose not to provide their workers with the necessary protection which would have limited their exposure to silica dust and other harmful agents. Indeed, the mining companies' drive for profits meant black mineworkers known to have contracted silicosis were allowed to go on working underground in dusty conditions. On top of their meagre pay for gruelling work over long hours, black mineworkers were housed in poor and overcrowded single sex hostels. One small room could house over a dozen mineworkers, and the lack of adequate ventilation inevitably increased the spread of contagious diseases.⁸

Current situation

Although for many years South Africa was the world's largest producer of gold, the sector is not as strong as it once was. Nevertheless, gold mining contributed 1.7% to gross domestic product in 2013,⁹ and last year the country's top four gold producers announced soaring profits and dividends.¹⁰

3. Silicosis

Definition and symptoms

Silicosis is 'an incurable lung disease caused by inhalation of dust that contains free crystalline silica'.¹¹ It is a form of pneumoconiosis. Inflammation and scarring of the lung tissue reduces the ability of the lungs to supply oxygen to the blood. In the gold mining industry chronic silicosis is the most common form. It is caused by prolonged exposure to silica dust and can take 10–30 years to appear after first exposure (i.e. often years after the worker has left the mines). The symptoms associated with chronic silicosis are not always obvious, especially early on, though abnormalities can be detected by X-ray. Symptoms of chronic silicosis can include a chronic cough, shortness of breath, fatigue, weight loss, chest pain and fever.

Mineworkers with chronic silicosis are unable to continue working. They and their families are often left destitute and have very limited or no access to screening and medical facilities, especially in rural areas, where most former mineworkers live. There are also more serious forms of silicosis (known as complicated silicosis), which can be fatal. Furthermore, silicosis can increase the risk of other serious and potentially life-threatening conditions, including

'When I think about my illness and the fact that I got sick from working at the mine, I get angry!'

MTHETHUNZIMA (47)

TB, a bacterial infection that is endemic in South Africa, and a major killer to this day. Indeed, epidemiological research indicates that 'silicosis substantially increases the risk of TB to a magnitude similar to that of HIV infection'.¹² The reason that those with silicosis are at high risk of TB infection is not well understood by medical experts, though silica is believed to interfere with the body's immune response to the bacteria that cause TB. In any case, silico-tuberculosis is a very serious and frequently fatal condition, especially if it is not diagnosed and treated promptly and effectively.

Prevalence

The fact that there are no accurate data on the numbers of ex-gold mineworkers suffering from silicosis and TB is a scandal. The gold mining companies have long proposed to help identify those ex-mineworkers across Southern Africa who are

eligible to claim compensation for illness – but they have not yet done so. This is typical of the way in which the gold mining industry has failed to live up to its responsibilities towards its former employees. What we do know is shocking. Traditionally labour-sending areas of South Africa and surrounding countries, to which former mineworkers have returned, have been destroyed by what the South African medical expert Professor Tony Davies has referred to as a ‘river of disease flowing out of South African gold mines’.¹³

Studies conducted in the 1990s and 2000s of former gold mineworkers from the Transkei region of South Africa, Botswana and Lesotho found that silicosis prevalence ranged from 22% to 36%.¹⁴ One of the studies in Lesotho examined mineworkers who were formerly employed at Anglo American’s President Steyn mine in the Free State. The authors argued that ‘these high rates of lung disease amongst former gold miners are of national concern ... these findings and their consistency with previously published reports on the prevalence of respiratory disease in ex miners provide a compelling case for improved statutory surveillance and reporting of silicosis and TB among former gold miners not just for compensation purposes, but also to monitor the effectiveness of control measures aimed at reducing the risk’.¹⁵

In 2005, the Government of South Africa’s Department of Labour estimated that there were 480,000 cases of silicosis among former gold mineworkers in Southern Africa.¹⁶ A 2010 study estimated there were 288,000 cases of compensable silicosis in South Africa.¹⁷ Unpaid occupational lung disease compensation for gold mineworkers has been estimated to run into billions of US dollars.¹⁸

In regard to the prevalence of TB, research indicates that ‘workers in South Africa’s gold mining industry have among the highest incidences of TB in the world, of between 3000 and 7000 cases per 100,000 population per year’.¹⁹ This incidence is estimated to be as much as ten times that in the general population.

4. Limitations of current compensation systems

The post-apartheid democratic government has enacted legislation aimed at transforming the mining industry, including reducing health and safety risks for mineworkers. However, mineworkers from the apartheid era have received very little assistance and support. The statutory compensation system for sick mineworkers is deeply flawed.

A bad deal for mineworkers

The Occupational Diseases in Mines and Works Act (ODMWA), which was last amended in 1994, provides for the payment of compensation to those suffering from six lung diseases in controlled mines and works. Compensation takes the form of a single lump sum payment based on the level of impairment. Yet the ODMWA compensation system is in a state of disarray. There are tens of thousands of unsettled compensation claims; according to one well-informed analyst ‘this is a pin-prick compared to potential claims’.²⁰ As noted earlier, most mineworkers cannot access a medical examination facility. The few ‘one-stop

‘Now I am sick and I cannot understand why they made me sick after all the years I worked for them.’

KHOLEKILE (55)

shops’ set up in recent years by the Department of Health (with the support of mining companies) for health screening and compensation claims are ineffective. In addition, the amount of compensation under ODMWA is very small (a one-off payment of 105,000 rand or around £6,445 for those with 100% permanent disability) and does not cover pain and suffering. Moreover, the ODMWA fund cannot meet even current liabilities. The roots of this underfunding lie in the apartheid period, when the South African government allowed gold mining companies to pay levies far below what was required for fund solvency. An attempt by the ODMWA Commissioner to raise levies to meet this shortfall was met with a court challenge by the Chamber of Mines.

What the mining companies want

The mining companies wish to move current and future mineworkers from the ODMWA compensation system to a scheme under the Compensation for Occupational Injuries and Diseases Act (COIDA) of 1993. COIDA covers occupational injuries and diseases in all industries excluding the six lung diseases that are covered by ODMWA. While the financial compensation under COIDA is superior to that available under ODMWA, this would be unsatisfactory for a number of reasons. Of particular relevance is the fact that COIDA grants the employer immunity against civil damages claims for negligence – it is a ‘no fault’ system of compensation. The companies are only offering to ‘top-up’ individual payouts without admitting any liability.

In addition, unlike the ODMWA system, COIDA includes neither any comparable right to compensation based on mandatory lung and heart autopsies (if workers die in mines) nor to free two-yearly medical examinations. The COIDA provisions for occupationally-related TB are also much weaker than under ODMWA. Finally, the governance of the COIDA fund is even worse than that of the ODMWA fund. The former is accused of mismanagement at best and corruption at worst. Medical doctors are becoming reluctant to treat injured and sick mineworkers because they are not paid for their work, and large amounts of time are required to settle even the most straightforward of claims.

5. Legal actions

Thembekile Mankayi

In October 2006, Thembekile Mankayi, a South African ex-mineworker, sued AngloGold Ashanti, his former employer, because he had developed silicosis while working in Vaal Reefs mine. The lawsuit was filed in the High Court of South Africa. In June 2009, the Court ruled in AngloGold Ashanti's favour, stating that Mankayi was statutorily barred from making his claim, and the following year the Supreme Court of Appeal upheld the High Court's ruling. On 3 March 2011, the Constitutional Court overturned the Supreme Court of Appeal judgement, and granted Mankayi the right to sue AngloGold Ashanti for causing him to contract silicosis. In a tragic twist, Mankayi died just six days before this very significant judgement.

Settlements

On 25 September 2013, another landmark was reached in the legal battle for justice. A test case litigation brought by 23 Free State mineworkers (including 18 President Steyn Mine claimants whose

'The mine has crushed me as we crushed the rocks underground.'

BOFIHLA (71)

claims began in 2004) against AASA became the first gold mineworkers' silicosis case to be settled in South Africa. The terms of the settlement were confidential, but included payment of a sum of money to 23 claimants (comprised of ex-mineworkers or the widows of deceased mineworkers). Seven of the 23 claimants died during the course of the litigation. The claimants' legal team was composed of Leigh Day, the Legal Resources Centre and the attorney Zanele Mbuyisa (of Mbuyisa Neale attorneys).

'I feel pain every time I breathe and I am now coughing blood ... I cannot feed my family anymore.'

TANKISO (59)

The test cases were intended to provide the foundation for future settlements. One such settlement, with an overall value estimated to be more than 500 million rand (£23 million), was achieved on 5 March 2016 on behalf of 4,365 claimants against AASA and AngloGold Ashanti. Under the settlement, 464 million rand (£21 million) will be paid into an independent trust, Q(h)ubeka. The trust will arrange for the 4,365 ex-mineworkers to have medical tests; those who have silicosis at or above a certain level and who are able to demonstrate they worked as a mineworker for the companies for at least two years will receive compensation. The amount each will receive will depend on the severity of their silicosis at the time of testing. A further amount will be paid to assist the trust to enable payment of ODMWA compensation to claimants who qualify for it. Anglo American and AngloGold Ashanti will fund the costs of the trust and the medical evaluations and, as with the test case, relatives of deceased claimants who meet the criteria will be included. The claimants' legal representatives are Zanele Mbuyisa assisted by Leigh Day.

Class action

While the March 2016 settlement is welcome and positive, it is limited to the 4,365 claimants; it is not a comprehensive industry-wide settlement. In December 2012 a class action was filed in the High Court of South Africa initially on behalf of 15,000 ex-gold mineworkers (now 30,000). It names 29 respondent gold mining companies who, it is claimed, are liable for 12 specific forms of neglect and endangerment. The class action was brought on behalf of the ex-mineworkers by Richard Spoor Inc, the Legal Resources Centre and Abraham Kiewietz Attorneys; the Treatment Action Campaign and Sonke Gender Justice were admitted as friends of the court and are represented by Section 27.

In May 2016 the High Court agreed that the class action could be certified (i.e. proceed). If the class action succeeds, it will in effect lead to an industry-wide compensation scheme for mineworkers suffering from silicosis and TB. Regrettably but predictably, the six mining companies that make up the OLDWG announced they would appeal the High Court decision. In June 2016 the High Court allowed the OLDWG companies leave to appeal against the

High Court's decision to allow dependents of the mineworkers to benefit from any settlement. The High Court did not permit the companies to appeal against the class action certification itself. The OLDWG companies lodged the permitted appeal, but did not stop there. The following month, they took a further step and filed leave to appeal the entire certification to the Supreme Court of Appeal. Last September, the mining companies were granted leave to appeal against all aspects of the class certification.

6. ACTSA's demands

ACTSA demands that the mining companies which profited from South Africa's gold urgently provide proper medical screening, decent financial compensation and healthcare, and adequate support for all ex- and current mineworkers suffering from silicosis and TB.

In ACTSA's view, if the mining companies were serious about wanting a fair and comprehensive settlement, they would have taken two steps. Firstly, they would have announced that they are prepared to accept the principle that the broad terms of any settlement of the class action (in regard to medical

evaluations, compensation and support) should be at least as good as the terms of the March 2016 settlement (certain procedures may have to differ as the class action is far larger in scale than the March 2016 settlement). Secondly, they would have recognised the urgency of a fair settlement, and achieved an agreement with those representing the mineworkers by the end of 2016. They have failed on both counts.

The mining companies say they want a settlement and not protracted litigation, yet it is they who have decided to appeal. A considerable number of ex-mineworkers with silicosis and TB have already died and further delays will mean that even more people die before a settlement is reached. The mining companies are well aware of this. Indeed, they seem to believe that paying their lawyers to prolong the legal wrangling is more cost-effective than ensuring that their former employees are adequately cared for in the years they have left to live. Moreover, these companies also suggest a trade-off between what ill ex-mineworkers receive and the numbers of mineworkers they will employ now and in the future. Yet those with silicosis and TB do not seek charity. They want justice - and this is long overdue.

Notes

- 1 Oxford Business Group (2014) The Report: South Africa 2014.
- 2 Bryceson D and MacKinnon D (2012) 'Eureka and beyond: Mining's impact on African urbanisation', *Journal of Contemporary African Studies*, 30.
- 3 Truth and Reconciliation Commission (1998) Truth and Reconciliation Commission of South Africa Report.
- 4 See: <http://www.oldcollab.co.za/information/introduction>.
- 5 Nelson, G (2013) 'Occupational respiratory diseases in the South African mining industry', *Global Health Action*, 6.
- 6 Leger J P (1994) 'Fatalities, disabilities and disease in South African mines', A submission to the Commission of Inquiry into Occupational Safety and Mining Industry.
- 7 Encyclopædia Britannica (2017) 'South Africa: Segregation', <https://www.britannica.com/place/South-Africa/Segregation>.
- 8 Basu, S et al (2009) 'The production of consumption: Addressing the impact of mineral mining on tuberculosis in southern Africa', *Global Health*, 5.
- 9 Statistics South Africa (2015) 'The decreasing importance of gold mining in South Africa', <http://www.statssa.gov.za/?p=4252>.
- 10 Wexler A (2016) 'Miners find South African gold recovers its luster', <https://www.wsj.com/articles/miners-find-south-african-gold-recovers-its-luster-1472139090>.
- 11 International Labour Organization (n.d.) 'Occupational health: Silicosis', <http://www.ilo.org/safework/areasofwork>.
- 12 Murray, J et al (2011) 'Occupational lung disease in the South African mining industry: Research and policy implementation', *Journal of Public Health Policy*, 32.
- 13 Cited in: Meeran, R (2015) 'Inhumane treatment of former mine workers suffering from silicosis', <http://www.lexology.com/library/detail.aspx?g=8579d0e1-84b5-4b11-96d1-957aea5f87de>.
- 14 References for all studies may be found in: Knight D et al (2015) 'Trends in silicosis prevalence and the healthy worker effect among gold miners in South Africa: A prevalence study with follow up of employment status', *BMC Public Health*, 15.
- 15 Girdler-Brown B V et al (2008) 'The burden of silicosis, pulmonary tuberculosis and COPD among former Basotho goldminers', *American Journal of Industrial Medicine*, 51.
- 16 Department of Labour (2005) 'National Programme for the Elimination of Silicosis'.
- 17 Rees D et al (2010) 'Oscillating migration and the epidemics of silicosis, tuberculosis, and HIV infection in South African gold miners', *American Journal of Industrial Medicine*, 53.
- 18 For example, see: Murray, J et al (2011) op. cit.
- 19 Stuckler D et al (2013) "'Dying for gold": the effects of mineral mining on HIV, tuberculosis, silicosis and occupational diseases in southern Africa', *International Journal of Health Services*, 43.
- 20 Lewis P (2016) 'Silicosis: The gold mines' ambitious plan', <http://www.groundup.org.za/article/silicosis-gold-mines-ambitious-plan/>.

Written by Sunit Bagree. Thanks to the following for their inputs: Tony Dykes, Christabel Gurney and Chitra Karve. This briefing paper has been printed with support from Unite. Quotes from mineworkers used with the kind permission of Leigh Day. More information about ACTSA: www.actsa.org

April 2017

